

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 BANNOCK STREET DENVER, COLORADO 80202		DATE FILED: June 7, 2019 5:33 PM FILING ID: B1BFD929DCCDC CASE NUMBER: 2019CV31577
Plaintiff: DEFEND COLORADO, a Colorado nonprofit association v. Defendants: GOVERNOR JARED POLIS and THE COLORADO AIR QUALITY CONTROL COMMISSION.		↑ COURT USE ONLY ↑
Attorneys for Plaintiffs: Paul M. Seby, #27487 Matt Tieslau #47483 GREENBERG TRAURIG, LLP 1200 Seventeenth Street, Suite 2400 Denver, Colorado 80202 Phone Number: 303.572.6500 Fax Number: 303.572.6540 E-Mail: sebyp@gtlaw.com tieslaum@gtlaw.com		Case Number: 2019CV31577 Division: Courtroom: 203
AFFIDAVIT OF JEFFREY CUMMINGS		

The Affiant, Jeffrey Cummings, being duly sworn, hereby affirms that the statements contained herein are based upon personal knowledge and, if called as a witness, will testify to the same.

1. My name is Jeffrey Cummings.

2. I am of legal age and I am competent to testify as to the facts set forth herein based on my personal knowledge and my participation as member in Defend Colorado.

3. I am the President and Chief Executive Officer of Duffy Crane & Hauling, Inc ("Duffy").

4. Duffy was founded in 1886 in Denver, Colorado, and is one of Colorado's oldest companies. Duffy's long history of continued success is due to our ongoing commitment to our customers in providing innovative solutions to their complex lifting, transportation, and millwright needs.

5. As a long operating business in Colorado that is intimately familiar with the lifting, transportation, and millwright industry in the state and across the country, Duffy is a member of the Colorado Motor Carriers Association, Colorado Concern, the American Trucking Association, and the Specialized Carriers & Rigging Association.

6. Duffy is also a member of Defend Colorado.

7. Duffy serves businesses by providing lifting, transportation, and millwright services for businesses in Colorado, including in the Denver Metro / North Front Range Area, such as:

- a. Providing transport services for oversized and heavy-weight machinery and components, including items such as large boiler units, components and equipment for construction of gas processing plants including gas compressing equipment and major processing equipment, generators and tanks for medical and hospital operations, equipment for data centers and the wireless telecom industry, and infrastructure materials and the like.

- b. Operating a fleet of hydraulic truck cranes, boom trucks, and all terrain and rough terrain cranes used in construction activities across Colorado, including construction and maintenance projects for many clients that are classified as emissions “sources” under the Clean Air Act such as oil and gas well operators, gas processing plants, hospitals, and other industrial and infrastructure operations.
 - c. Operating as a millwright, building and maintaining machinery for many large industrial operators that are regulated under the Clean Air Act in Colorado such as Ball Aerospace, Ball Container, Ball Metal, Baker Hughes, Coorstek, Lockheed Martin, Xcel Energy, Siemens Energy, the University of Colorado, and others.
8. Duffy relies on Defend Colorado to participate in administrative and legal proceedings that further Defend Colorado’s organizational purpose and protect Duffy’s interests, along with all Coloradans.
9. Duffy supports Defend Colorado’s Petition for Expedited Public Hearing and Request for Declaratory Order (“Petition”) to the Colorado Air Quality Control Commission (“Commission”).
10. Duffy therefore opposes the Commission’s refusal to rule on Defend Colorado’s Petition and supports Defend Colorado’s current challenge to the Commission’s refusal to rule on the Petition.
11. Duffy also supports Defend Colorado’s challenge to Governor Polis’ recent March 26, 2019 letter (“Withdrawal Letter”) withdrawing Colorado’s prior June 4, 2018 extension request to the U.S. Environmental Protection Agency (“EPA”).

12. Duffy is injured by the Commission's refusal to rule on Defend Colorado's Petition because the Commission has denied Duffy, through Defend Colorado, its statutory right to participate in a public hearing on Colorado's annual certification of its air quality data and NAAQS attainment status to EPA.

13. Duffy is also injured by the Commission's refusal to rule on Defend Colorado's Petition by denying Duffy its statutory right to participate in a public hearing held to develop an accurate accounting of Colorado's air emissions inventory, including whether international emissions and exceptional events are materially affecting Colorado's air quality.

14. Duffy is injured by the Governors Withdrawal Letter because the letter violates the separation of powers required by the Colorado Constitution and otherwise deprives Duffy of its right to participate in a public hearing that the Commission would be required to hold if properly issuing the Withdrawal Letter.

15. Duffy is also injured by the Commission's refusal to rule on Defend Colorado's Petition and separately by the Governor's Withdrawal Letter because those actions may cause or contribute to the Denver Metro / North Front Range Area being designated as a Serious Nonattainment Area for ozone (pursuant to 42 U.S.C. § 7407 and 7511 of the Clean Air Act), and which will impose harmful regulatory oversight and permitting requirements on both Duffy and the many Colorado businesses it provides services to:

- a. Duffy operates a large industrial vehicle fleet that will be subject to more stringent VOC, NOx, and SOx (ozone precursors) regulations as mobile sources under a Serious Nonattainment Area designation, resulting in increased regulatory costs and burdens that will harm Duffy's operations.

- b. For example, the increased regulatory costs and burdens will affect Duffy's ability to maintain, replace, and upgrade its current vehicle and crane fleet, impair its ability to retrofit existing equipment, and will significantly raise diesel fuel costs for Duffy's ongoing operations.
- c. Additionally, a significant portion of Duffy's clients are industrial businesses located in the Denver Metro / North Front Range Area that are regulated as air emissions sources. A Serious Nonattainment Area designation will result in significant regulatory burdens and oversights for those business, which increased regulatory burdens and costs will result in decreased business opportunities for Duffy as those businesses will no longer be engaging in new projects, and therefore no longer contracting for Duffy's lifting, transportation, and millwright services.
- d. The increased regulatory burdens and costs that a Serious Nonattainment Area designation will impose on the businesses Duffy serves in Colorado will make it difficult or impossible for those business to justify the increased costs for construction projects, which Duffy would otherwise be contracted to assist with providing commercial lifting, transportation, and millwright services.
- e. For example, Duffy has been approached to provide crane operation and transportation services for construction of natural gas processing plants in the Denver Metro / North Front Range Nonattainment Area, but has been informed that the gas plants may not be constructed under a Serious Nonattainment Area designation due to the increased permitting requirements and other regulatory costs that will be imposed as a result of such designation.

f. Further, the lack of demand for Duffy's lifting, transportation, and millwright services will not be limited to gas processing plants, but will also include other industries and operators in Colorado that regularly contract for Duffy's services. As a member in several local and national associations, including the Colorado Motor Carriers Association, Colorado Concern, the American Trucking Association, and the Specialized Carriers & Rigging Association, which associations include over 650 member-businesses who are similarly situated transportation companies and their suppliers, Duffy has both observed and been informed by those member-businesses of the concrete harms that Serious Nonattainment Area designations have visited upon other states. Based on Duffy's firsthand observations and the information received from similarly situated member-businesses of the aforementioned associations Duffy maintains membership in, Duffy believes that:

- i. Capital investments in operations that require lifting, transportation, and millwright services in Colorado will be significantly reduced;
- ii. Lifting, transportation, and millwright services will become significantly more expensive in Colorado; and
- iii. Out-of-state operators will actively avoid investing in – and operating in – Colorado due to the significant and increased regulatory hurdles that will be present in the state, thereby isolating Colorado as an “island” and further restricting the Duffy's business opportunities and decreasing Duffy's margin even when limited opportunities are available.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Executed on this 6 day of June, 2019.



Jeffrey Cummings

State of Colorado)
) S.S.
County of Adams)

Subscribed and sworn to (or affirmed to) before me in the county of Adams
State of Colorado, this 6 day of June, 2019.


(Notary's official Signature)

04/20/2020
(Commission Expiration)

